

Chapter 132T-09 WAC

PRACTICE AND PROCEDURE

WAC

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WAC 132T-09-001 Formal hearing policy. In each instance that a formal hearing is required by institutional policy, regulation or chapter 28B.19 RCW, the provisions of WAC 132T-09-001 through 132T-09-480 shall be applicable.

[Order 72-8, § 132T-09-001, filed 5/2/72.]

WAC 132T-09-005 Definitions. As used herein, the term "agency" shall mean the board of trustees of Community College District No. 20 and Walla Walla Community College.

[Order 72-8, § 132T-09-005, filed 5/2/72.]

WAC 132T-09-010 Appearance and practice before agency. No person may appear in a representative capacity before the agency other than the following:

(5/1/72)

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the agency and have been duly authorized by the agency to appear in a representative capacity before the agency.

(4) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

[Order 72-8, § 132T-09-010, filed 5/2/72.]

WAC 132T-09-080 Notice and opportunity for hearing in contested cases. In any contested case all parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall be signed by the president of Walla Walla Community College or his designee and shall state the time, place and issues involved as required by RCW 28B.19.120.

[Order 72-8, § 132T-09-080, filed 5/2/72.]

WAC 132T-09-090 Service of process—By whom served. The agency shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

[Order 72-8, § 132T-09-090, filed 5/2/72.]

WAC 132T-09-100 Service of process—Upon whom served. All papers served by either the agency or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

[Order 72-8, § 132T-09-100, filed 5/2/72.]

WAC 132T-09-110 Service of process—Service upon parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

[Order 72-8, § 132T-09-110, filed 5/2/72.]

WAC 132T-09-120 Service of process—Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail or by telegraph.

[Order 72-8, § 132T-09-120, filed 5/2/72.]

WAC 132T-09-130 Service of process—When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed, by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

[Order 72-8, § 132T-09-130, filed 5/2/72.]

WAC 132T-09-140 Service of process—Filing with agency. Papers required to be filed with the agency shall be deemed filed upon actual receipt by the secretary of the agency at Walla Walla, Washington, accompanied by proof of service upon parties required to be served.

[Order 72-8, § 132T-09-140, filed 5/2/72.]

WAC 132T-09-230 Depositions and interrogatories in contested cases—Right to take. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within twenty days after the filing of a complaint, application or petition. Depositions shall be taken only in accordance with this rule.

[Order 72-8, § 132T-09-230, filed 5/2/72.]

WAC 132T-09-240 Depositions and interrogatories in contested cases—Scope. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

[Order 72-8, § 132T-09-240, filed 5/2/72.]

WAC 132T-09-250 Depositions and interrogatories in contested cases—Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceedings.

[Order 72-8, § 132T-09-250, filed 5/2/72.]

WAC 132T-09-260 Depositions and interrogatories in contested cases—Authorization. A party desiring to take the deposition of any person upon oral examination shall give

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reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the agency may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used as other depositions.

[Order 72-8, § 132T-09-260, filed 5/2/72.]

WAC 132T-09-270 Depositions and interrogatories in contested cases—Protection of parties and deponents.

After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the agency or its designee may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the agency, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the agency; or the agency may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Order 72-8, § 132T-09-270, filed 5/2/72.]

WAC 132T-09-280 Depositions and interrogatories in contested cases—Oral examination and cross-examination. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[Order 72-8, § 132T-09-280, filed 5/2/72.]

WAC 132T-09-290 Depositions and interrogatories in contested cases—Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[Order 72-8, § 132T-09-290, filed 5/2/72.]

WAC 132T-09-300 Depositions and interrogatories in contested cases—Signing attestation and return. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the agency holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the agency for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[Order 72-8, § 132T-09-300, filed 5/2/72.]

WAC 132T-09-310 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the agency upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the agency upon its own motion or the motion of any party. Except by agreement of the parties or ruling of the agency, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

[Order 72-8, § 132T-09-310, filed 5/2/72.]

(5/1/72)

WAC 132T-09-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken.

[Order 72-8, § 132T-09-320, filed 5/2/72.]

WAC 132T-09-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross interrogatories.

[Order 72-8, § 132T-09-330, filed 5/2/72.]

WAC 132T-09-340 Depositions upon interrogatories—Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 132T-09-250, the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

[Order 72-8, § 132T-09-340, filed 5/2/72.]

WAC 132T-09-350 Depositions upon interrogatories—Attestation and return. The officer before whom interrogatories are verified or answered shall:

(1) Certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and

(2) Promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the agency, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[Order 72-8, § 132T-09-350, filed 5/2/72.]

WAC 132T-09-360 Depositions upon interrogatories—Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

[Order 72-8, § 132T-09-360, filed 5/2/72.]

WAC 132T-09-400 Hearing officers. In each instance that a formal hearing is required by institutional policy or chapter 28B.19 RCW, and upon receipt of a request for a for-

mal hearing filed in accordance with chapter 28B.19 RCW, the chairman, vice chairman, or another member of the board of trustees, on the basis of longevity and in the preceding order, may appoint one or more hearing officers, not to exceed three for any one hearing, to preside over, conduct and make proposals for decisions, including findings of fact and conclusions of law, in each instance, and shall afford an opportunity for a formal hearing after not less than ten days notice and provide such individual requesting formal hearing with notice of the hearing in accordance with the provisions of chapter 28B.19 RCW.

[Order 72-8, § 132T-09-400, filed 5/2/72.]

WAC 132T-09-410 Hearing procedures. Each hearing shall be conducted in the manner provided for in these rules and in chapter 28B.19 RCW.

[Order 72-8, § 132T-09-410, filed 5/2/72.]

WAC 132T-09-420 Duties of hearing officers. (1) All hearing officers appointed in accordance with WAC 132T-09-400 shall conduct hearings in the same manner and shall have the same authority as provided in hearings by the board of trustees as set forth in these rules and in chapter 28B.19 RCW: Provided, That hearing officers shall only make proposals for decisions.

(2) The proposals for decisions and findings of fact and conclusions of law shall be forthwith served upon the parties and transmitted to the board of trustees, together with a record of the proceeding. Within ten days of service of such proposal for decisions, any party adversely affected may file exceptions and thereafter all parties may present written argument to the board of trustees, which shall consider the whole record or such portions as may be cited by the parties, and after such review the board shall announce its decision and final action to be taken.

(3) If a hearing officer is designated by the board of trustees of Walla Walla Community College to conduct a hearing pursuant to these rules, the board in its discretion may allow oral or written argument before making a final adjudication of the matter after it has received the proposal from the hearing officer. The board may limit the length of oral or written argument and impose reasonable limitations regarding the time and place of where arguments may be presented.

[Order 72-8, § 132T-09-420, filed 5/2/72.]

WAC 132T-09-430 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) Upon whom binding. Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

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(2) Withdrawal. Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the agency that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Order 72-8, § 132T-09-430, filed 5/2/72.]

WAC 132T-09-440 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that the agency may proceed promptly to conduct the hearings on relevant and material matter only.

[Order 72-8, § 132T-09-440, filed 5/2/72.]

WAC 132T-09-450 Continuances. Any party who desires a continuance, shall immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the agency of said desire, stating in detail the reasons why such continuance is necessary. The agency, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the agency may grant such a continuance and may at any time order a continuance upon its motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the agency may in its discretion continue the hearing and fix the date for introduction or additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Order 72-8, § 132T-09-450, filed 5/2/72.]

WAC 132T-09-460 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the agency is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the agency shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

[Order 72-8, § 132T-09-460, filed 5/2/72.]

WAC 132T-09-470 Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The agency may, in its discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Order 72-8, § 132T-09-470, filed 5/2/72.]

WAC 132T-09-480 Form and content of decisions in contested cases. Every decision and order, whether proposed, initial or final, shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;
- (6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

[Order 72-8, § 132T-09-480, filed 5/2/72.]